

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

TIMOTHY WRIGHT,

Petitioner, : Case No. 3:15-cv-161

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

ALAN J. LAZAROFF, Warden,
Mansfield Correctional Institution,

Respondent.

REPORT AND RECOMMENDATIONS

This habeas corpus action was transferred to the United States Court of Appeals for the Sixth Circuit for a determination under 28 U.S.C. § 2244(b) of whether Petitioner should be allowed to proceed, given that the Petition herein is a second or successive petition (Transfer Order, ECF No. 5). The Sixth Circuit has now denied that permission. *In re Timothy D. Wright*, Case No. 15-3523 (6th Cir. Jan. 6, 2016)(unreported, copy at ECF No. 6).

A district court has no authority to decide on the merits a habeas petition which is second or successive without the permission of the Court of Appeals. *Burton v. Stewart*, 549 U.S. 147 (2007).

Accordingly, it is respectfully recommended that the Petition herein be dismissed without prejudice to the merits of any claims made.

January 9, 2016.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).